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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,448	07/18/2003	Tsutomu Ohishi	240473US2	1119
22850 7590 08/17/2010 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER KAU, STEVEN Y				
ART UNIT 2625		PAPER NUMBER		
NOTIFICATION DATE 08/17/2010		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/621,448	Applicant(s) OHISHI ET AL.
Examiner STEVEN KAU	Art Unit 2625

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 August 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1,2,4-11,13 and 15-23.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/David K Moore/
Supervisory Patent Examiner, Art Unit 2625

/Steven Kau/
Examiner, Art Unit 2625

Continuation of 11, does NOT place the application in condition for allowance because: Applicant's arguments filed 8/10/2010, with respect to the rejection of claims 11, 4-10, 15-20 and 22 under 35 U.S.C. 102(e) have been fully considered but they are not persuasive for the following reasons:

Prior art Matsushima (US 2002/0144257) discloses a system including a multifunction machine connected to a network with Server 20 in Figure 1, and the software configuration of the multifunction machine of Figure 2.

With respect to claim 1 of the pending application, is directed to an image forming apparatus, limitations recite, "an application launch part configured to access launch selection information, the launch selection information indicating at least an auxiliary storage device that stores one or more applications from among a plurality of kinds of auxiliary storage devices, and configured to launch the one or more applications from the auxiliary storage device according to the accessed launch selection information; and a part configured to display a setting screen that sets the launch selection information on a display part of the image forming apparatus, and configured to store information input from the setting screen as the launch selection information, wherein the service modules are stored in a memory distinct from the auxiliary storage device, wherein the one or more applications are installed in the auxiliary storage device, and wherein the application launch part launches the one or more applications from the auxiliary storage device by issuing an execution command which is stored in the auxiliary storage device."

The image forming apparatus of claim 1 comprising the following structural elements:

- (a) an application launch part;
- (b) a part configured to display, and configured to store information;

These two structural elements are taught and anticipated by prior art Matsushima discussed in the previous Action.

MPEP 2114: APPARATUS CLAIMS MUST BE STRUCTURALLY DISTINGUISHABLE FROM THE PRIOR ART >While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. >In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also In re Swinehart, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); <In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). [A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original).

Applicant argues, on page 10, Remarks, "The outstanding Action asserts on page 10 that referring to Fig. 4, a process of downloading a software component, i.e. multifunction machine 10 sends a request command for authentication in Step 404, and receives the authentication information from Server 20 in Step 407; multifunction machine 10 access the target URL and Server 20 transmit the requested software component to multifunction machine 10 in Steps 408 to 411; thus, executing commands such requesting authentication, accessing to the target URL and downloading the software components are stored in Server 20 so that a software download communication is established, Pars. [0070] to [0075]."

This is quoted from the previous Action for the "wherein" clause rejection, which the examiner believes that the rejection is proper and still stands.

Applicant, on page 11, Remarks, argues, "In response, Applicants note that the claimed invention recites that the "one or more applications" are launched "from the auxiliary storage device." In contrast, the "the application plug-in for downloading the software" of Matsushima is not launched from the server 20."

Examiner replies: As discussed in the previous Action, Paragraphs [62] to [64] and Figures 1 and 3 of Matsushima teaches this "wherein" clause limitations.

Applicant, on page 11, Remarks, argues, "In response, Applicants note that the claimed invention recites that the execution command is stored in the auxiliary storage device. In contrast, the commands executing the steps of "requesting authentication, accessing to the target URL and downloading the software components" are not stored in the server 20."

Examiner replies: As discussed in the previous Action, Paragraphs [62] to [64] and Figures 1 and 3 of Matsushima teaches this "wherein" clause limitations.

For instance, "The application 130 has Page Description Language (PDL) and a printer application 131 as an application for a printer having PCL and PostScript (PS). This application 130 also has a copier application 132 as an application for a copier, a facsimile application 133 as an application for a facsimile, and a scanner application 134 as an application for a scanner. The application 130 further has a WWW browser 135 for browsing WWW (World Wide Web) pages as a distributed system on the Internet, a download application 136 that downloads a software component and so on from the server 20, and an authentication processing application 137 that performs authentication processing based on authentication information accepted from the server 20. The download application 136 and authentication processing application 137 will be explained in detail later."

Based on the above reasons, the examiner believes the rejection made in the previous Action is proper and still stands.

/Steven Kau/
Examiner
AU2625
August 11, 2010